
United States
Circuit Court of Appeals

For the Ninth Circuit.

GREAT NORTHERN RAILWAY COMPANY,
a Corporation,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
Eastern District of Washington, Northern Division.

Filed

SEP. 23 1916

F. D. Monckton,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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M. C. LIST, Special Attorney, Federal Building,
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Attorneys for Plaintiff and Defendant in
Error,

and

CHARLES S. ALBERT, Great Northern Passenger
Station, Spokane, Washington,

THOMAS BALMER, Great Northern Passenger
Station, Spokane, Washington.

Attorneys for Defendant and Plaintiff in
Error. [1*]

*In the District Court of the United States for the
Eastern District of Washington, Northern Divi-
sion.*

No. 2075.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
a Corporation,

Defendant.

Complaint.

Now comes the United States of America, by
Francis A. Garrecht, United States Attorney for the

*Page-number appearing at foot of page of original certified Record.

Eastern District of Washington, and brings this action on behalf of the United States against the Great Northern Railway Company, a corporation organized and doing business under the laws of the State of Minnesota, and having an office and place of business at Merritt, in the State of Washington; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

FOR A FIRST CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 9, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1918; said train being run over a part of a through highway of interstate commerce, and being then [2] and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdic-

tion of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Acts of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A SECOND CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 11, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1900; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said de-

defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within [3] the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A THIRD CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 13, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1910; said train being

run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of [4] said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A FOURTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903

(contained in 32 Statutes at Large, page 943), said defendant, on July 14, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1917; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended. [5]

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to the plaintiff in the sum of one hundred dollars.

FOR A FIFTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at

Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 15, 1914 ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1918; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to the plaintiff in the sum of one hundred dollars. [6]

FOR A SIXTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 16, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1911; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress as amended, defendant is liable to the plaintiff in the sum of one hundred dollars.

FOR A SEVENTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the

times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington. [7]

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 17, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1907; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, de-

defendant is liable to plaintiff in the sum of one hundred dollars.

FOR AN EIGHTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), [8] and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 18, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1912; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train; and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1

of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A NINTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 18, 1914, ran on its line of railroad its certain freight train, known as Extra East, drawn by its own locomotive engine No. 1904, said train being [9] run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed

of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Acts of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A TENTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 20, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1921; said train being run over a part of a through highway of interstate commerce, and being then and their engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade [10] Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake

for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR AN ELEVENTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 21, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1904; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of

railroad from Cascade Tunnel, in the State of Washington, to Merritt in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common [11] hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A TWELFTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 22, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1901; said train being run over a part of a through highway of interstate

commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakeman using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by section 1 of the aforesaid Act of March 2, 1893, as [12] amended.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of twelve hundred dollars and its costs herein expended.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Complaint. Filed December 18, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [13]

[Title of Court and Cause.]

Answer.

Now comes the above-named defendant, Great Northern Railway Company, and for its answer to the complaint of the plaintiff herein, and to each and every cause of action therein set forth:

I.

Said defendant admits that this action was brought on behalf of the United States against this defendant, and that this defendant is a corporation, organized and doing business under the laws of the State of Minnesota, and that it has, and did have during all the times mentioned in the complaint herein, an office and place of business at Merritt in the State of Washington. Said defendant admits that this action has been brought by the United States of America, through Francis A. Garrecht, United States Attorney for the Eastern District of Washington, upon the suggestion of the Attorney General of the United States, at the request of the Interstate Commerce Commission, upon information furnished by said Commission.

II.

Said defendant further admits that it is, and was during all the times mentioned in said complaint, a common carrier engaged in interstate commerce by railroad in the State of Washington, and that on the dates, at the times, and by the engines therein named, it ran upon its line of railroad freight trains mentioned in said complaint, and that each and all of said trains were run over a part of the through

highway of interstate commerce, and were then [29] and there engaged in the movement of interstate traffic, and that said defendant ran said trains from Cascade Tunnel to Merritt, both in the State of Washington, and within the jurisdiction of the court herein.

III.

Said defendant further alleges that each engine upon each of said trains was equipped with power-driving wheel brake and appliances for operating a train-brake system, and that in each train not less than eighty-five per cent of the cars therein were equipped with power or train-brakes, which were used and operated by the engineer of the locomotive drawing such train, to control its speed in connection with the hand-brakes.

IV.

Said defendant specifically denies that the Act of Congress mentioned in the complaint herein as amended, was violated by the said defendant, and denies that the said defendant is liable to the said plaintiff, either in the sum of one hundred dollars on each and every cause of action set forth in said complaint, or in any sum.

WHEREFORE, said defendant prays judgment that plaintiff take nothing by its action, and that said defendant be dismissed and discharged from the said premises and said complaint, as specified.

(Signed) CHARLES S. ALBERT,
THOMAS BALMER,

Attorneys for Defendant.

State of Washington,
County of Spokane.

Charles S. Albert, being duly sworn, on oath says: That he is one of the attorneys for the defendant, Great Northern Railway Company, in the above-entitled cause, that he has read the foregoing [30] answer, knows the contents thereof, and he believes the same to be true.

That defendant is a foreign corporation, is not within said county, is incapable of making the affidavit of verification herein, is absent from said county, and has no officer within the same authorized to make the verification, other than its attorneys, one of whom is affiant, who is duly authorized so to do and that the reason for this affiant making this verification is hereinbefore immediately set forth.

(Signed) CHARLES S. ALBERT.

Subscribed and sworn to before me this 12th day of May, 1916.

(Signed) HERBERT H. SIELER,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

[Endorsements]: Answer. Due service of the within answer by a true copy thereof is hereby admitted at Spokane, Washington, this 13th day of May, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 1, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [31]

[Title of Court and Cause.]

Bill of Exceptions.

BE IT REMEMBERED, That on the 19th day of July, 1916, the above-entitled cause come on for trial before the above-entitled court, upon plaintiff's motion for judgment upon the pleadings, and the cause having been submitted to the above-entitled court for final decision and judgment upon the pleadings:

Honorable Frank H. Rudkin presided over said court. The plaintiff appeared by Francis A. Garrecht, its counsel, and defendant appeared by Charles S. Albert and Thomas Balmer, its counsel, and the following proceedings were had: Plaintiff made a motion for judgment upon the pleadings in words as follows: (Title of Court and Cause.)

Motion for Judgment upon Pleading.

MOTION.

“Comes now the plaintiff, by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and moves the Court that judgment be entered herein in favor of the plaintiff upon the pleadings in said action.

Dated this 19th day of July, A. D. 1916.

FRANCIS A. GARRECHT,
United States Attorney.”

Whereupon the defendant objected to the granting of said motion in words as follows: (Title of Court and Cause.)

OBJECTIONS TO GRANTING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE
PLEADINGS.

“Now comes the above-named defendant, Great Northern Railway [37] Company, and objects to the granting of the motion of the plaintiff to grant judgment herein in favor of the plaintiff and against the defendant on each and every cause of action herein, upon the following grounds:

I.

That no cause of action in favor of the plaintiff and against the defendant has been proven or is shown by the pleadings.

II.

That no cause of action against the defendant has been proven or shown by the pleadings under the Acts of Congress known as The Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an act approved March 2, 1902 (contained in 32 Statutes at Large, page 943), which act is entitled “An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in Interstate Commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,” nor under the order of the Interstate Commerce Commission promulgated June 6, 1910, in the matter of the standard height of the minimum percentage of power brakes.

III.

That it is shown that the defendant has fully equipped its locomotives and cars as required by said statutes and said order and that said statutes and said order do not prohibit the use of hand-brakes for the purpose of controlling the speed of said trains.

IV.

That the complaint herein does not charge a violation of said Acts or of said order, nor does it charge that a sufficient number of cars in the train were not equipped with power or train-brakes to enable the engineers, on the locomotives drawing said [38] train, to control their speed without requiring brakemen to use the hand-brakes for that purpose, nor does said complaint charge a failure to comply with the requirements of said acts or said order of the Interstate Commerce Commission.

V.

That it appears from the pleadings herein that the trains in question were properly equipped and that said equipment was used and operated by the engineer of the locomotive drawing each of said trains to control the speed thereof.

VI.

That to allow the plaintiff herein to recover any judgment against the defendant herein, on account of the causes of action, or any thereof, alleged in said complaint, or to allow any finding to be made or collected herein, under and pursuant to the complaint herein, would be contrary to the provisions of said statute above referred to, known as the Safety Ap-

pliance Act, and the said order of the Interstate Commerce Commission, and would deprive the plaintiff of its property, without due process of law, and would be contrary to the provisions of article 5 of the amendments to the Constitution of the United States and contrary to the provisions of Section 1 of Article XIV, in addition to and amendatory of the Constitution of the United States.

VII.

That to allow any judgment to be rendered, had or recovered against said defendant herein, or to enforce the same against the said defendant, or to allow the said plaintiff to collect from the said defendant any moneys or any judgment, either in this action or this court, or by reason of any action brought in this court, upon the subject matter of this action, or to enforce any judgment thereon would be to deprive the said defendant of its property, without due process of law, and would be to deny the said defendant the equal protection of the laws, contrary to section 1 of Article [39] XIV, in addition to and amendatory of the Constitution of the United States.

CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Defendant.”

Whereupon the Court overruled the objections of the defendant and granted the motion of the plaintiff.

Whereupon the defendant duly excepted to the overruling of said objections of the defendant and excepted to the granting of the plaintiff's motion

for judgment on the pleadings, which exception is duly allowed by the Court.

Therefore, and upon said 19th day of July, 1916, judgment was entered in favor of the plaintiff against the defendant in the following language:

(Title of Court and Cause.)

Judgment.

“This matter coming on this day for hearing on the motion of Francis A. Garrecht, United States Attorney for the Eastern District of Washington, that judgment upon the pleadings be entered herein in favor of the plaintiff; the plaintiff being represented by the said United States Attorney, and the defendant, Great Northern Railway Company, appearing by Charles S. Albert, Esquire, its attorney, and the Court being fully advised in the premises, it is therefore

ORDERED and ADJUDGED that the defendant, Great Northern Railway Company, is hereby fined in the sum of twelve hundred dollars, being one hundred dollars for each cause of action set forth in the complaint; and it is further

ORDERED and ADJUDGED that said plaintiff, United States of America, do have and recover of and from said defendant, Great Northern Railway Company, its costs and disbursements herein incurred, to all of which defendant duly excepted, which exception is allowed. [40]

Done in open court this 19th day of July, A. D. 1916.

FRANK H. RUDKIN,
Judge.”

Whereupon the defendant duly excepted to the rendering and entering of the judgment in the above-entitled action, ordering and adjudging that the defendant be fined in the sum of twelve hundred dollars, and ordering and adjudging that the plaintiff have and recover from the defendant said sum and plaintiff's costs and disbursements pleaded and entered on the 19th day of July, 1916, and to said judgment, which exception is duly allowed by the Court.

Stipulation Re Evidence, etc.

IT IS HEREBY STIPULATED that the foregoing is conformable to the truth and contains all the evidence offered or introduced at the above-entitled action and also the findings of the Court in full and all objections, rulings, orders and all other proceedings had upon said trial, and that the same shall be settled and allowed as the settled case and bill of exceptions herein by the Honorable Frank H. Rudkin,, Judge of said court, without further notice.

(Signed) FRANCIS A. GARRECHT,

Attorney for Plaintiff.

CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Defendant.

Order Settling Bill of Exceptions.

I hereby certify that the foregoing case and bill of exceptions has been examined by me and found conformable to the truth, and contains all the evidence offered or introduced on the trial of said cause, and also the findings of said Court in full,

and all objections, rulings, orders and all other proceedings had upon said trial, and I hereby settle and allow the same as the settled case and bill of exceptions herein.

Dated at Spokane, Washington, July 27, 1916.

(Signed) FRANK H. RUDKIN,
District Judge.

[Endorsements]: Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [41]

[Title of Court and Cause.]

Petition for Order Allowing Writ of Error.

Defendant in the above-entitled cause feeling itself aggrieved by the findings of the Court and the judgment entered on the 19th day of July, 1916, comes now by Charles S. Albert and Thomas Balmer, its attorneys, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made, fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings of this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

(Signed) CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Defendant.

[Endorsements]: Petition for Order Allowing Writ of Error. Due service of the within Petition by true copy thereof is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [42]

[Title of Court and Cause.]

Assignment of Errors.

Comes now the defendant and files the following assignment of errors, upon which it will rely upon its prosecution of the writ of error in the above-entitled cause, from the findings and the judgment made by this Honorable Court on the 19th day of July, A. D. 1916, in the above-entitled cause:

I.

That the United States District Court, in and for the Eastern District of Washington, Northern Division, erred in overruling the objection of the defendant to the granting of plaintiff's motion upon the pleadings.

II.

That the said Court erred in granting the motion of the plaintiff for judgment in favor of the plaintiff upon the pleadings.

III.

That said Court erred in finding that the defendant was guilty of a violation of the Act of Congress known as the "Safety Appliance Act," approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), which Act is entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in Interstate Commerce to equip their cars with automatic couplers [43] and continuous brakes and their locomotives with driving-wheel brakes and for other purposes."

IV.

That said Court erred in ordering judgment to be entered herein and imposing a fine of one hundred dollars upon each cause of action, and twelve hundred dollars in all upon said defendant.

V.

That the said Court erred in ordering and rendering judgment herein in favor of the plaintiff and against the defendant for the sum of twelve hundred dollars, and the plaintiff's costs and disbursements therein.

WHEREFORE, the said Great Northern Railway Company, plaintiff in error, prays that the judgment of the District Court of the United States for the Eastern District of Washington, Northern Division, be reversed, and that said District Court be

directed to grant a new trial of said cause.

(Signed) CHARLES S. ALBERT,
THOMAS BALMER,

Attorneys for Plaintiff in Error, Defendant in the
Lower Court.

[Endorsements]: Assignment of Errors. Due service of the within Assignment of Errors by true copy thereof, is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [44]

[Title of Court and Cause.]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Great Northern Railway Company, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto the United States of America, in full and just sum of two thousand dollars, to be paid to the United States of America, for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of July, 1916.

WHEREAS, lately at the April Term, A. D. 1916, of the District Court of the United States for the Eastern District of Washington, Northern Division,

in a suit pending in said court between the United States of America, plaintiff, and Great Northern Railway Company, defendant, a final judgment was rendered against said defendant, and the said defendant, Great Northern Railway Company, having obtained from said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America is about to be issued, citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, thirty days from and after the filing of said citation;

Now, the condition of the above obligation is such that [45] if the said Great Northern Railway Company shall prosecute its writ of error to effect, and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation be void; otherwise to remain in full force and effect.

(Signed) GREAT NORTHERN RAIL-
WAY COMPANY.

By CHARLES S. ALBERT and
THOMAS BALMER,

Its Attorneys.

NATIONAL SURETY COMPANY.

By LESTER P. EDGE,

Resident Vice-president.

[Corporate Seal]

F. S. JONES,

Resident Assistant Secretary.

Plaintiff is satisfied with the within bond and the surety thereon.

(Signed) FRANCIS A. GARRECHT,
Attorney for Plaintiff.

The foregoing bond is approved as to form, amount and sufficiency of surety this 27th day of July, 1916.

(Signed) FRANK H. RUDKIN,
Judge of the United States District Court, Eastern District of Washington.

[Endorsements]: Bond. Due service of the within Bond by a true copy thereof is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [46]

[Title of Court and Cause.]

Order Allowing Bond.

Defendant, Great Northern Railway Company, having this day filed its petition for a writ of error from the findings, decision and judgment thereon, made and entered herein, to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which it should give and furnish upon said writ of error, and that upon the giving of said security, all further proceedings of this court be suspended and stayed until the determination of said writ of error by the said

United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having this day been duly allowed.

NOW, THEREFORE, IT IS ORDERED that upon the said defendant, Great Northern Railway Company, filing with the clerk of this court a good and sufficient bond in the sum of two thousand dollars, to the effect that if the said defendant, Great Northern Railway Company, plaintiff in error, shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by the Court; that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error [47] by the said United States Circuit Court of Appeals.

Dated this 27th day of July, 1916.

(Signed) FRANK H. RUDKIN,
District Judge.

[Endorsements]: Order Allowing Bond. Due service of the within Order by a true copy thereof is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Defendant in Error. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [48]

At the stated term, to wit, the April Term, A. D. 1916, of the District Court of the United States of America of the Ninth Judicial Circuit, in and for the Eastern District of Washington, Northern Division, held at the courtroom in the city of Spokane, Washington, on the 27th day of July, in the year of our Lord 1916. Present, Honorable FRANK H. RUDKIN, District Judge.

[Title of Court and Cause.]

Order Allowing Writ of Error.

Upon motion of Charles S. Albert and Thomas Balmer, Esq., attorneys for defendant, and upon filing a petition for writ of error and an assignment of errors:

IT IS ORDERED that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein and that the amount of bond on said writ of error be and hereby is fixed at two thousand dollars, which said bond may be executed by said defendant as principal, by its attorneys herein, and by such surety or sureties as shall be approved by this court, and which shall operate as a supersedeas bond and stay of execution is hereby granted, pending the determination of such writ of error.

(Signed) FRANK H. RUDKIN,

District Judge. [49]

[Endorsements]: Order Allowing Writ of Error. Due service of the within order by a true copy thereof is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [50]

Citation on Writ of Error.

The President of the United States to the United States of America and FRANCIS A. GARRECHT, Its Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein the United States of America is plaintiff and you are defendant in error and the said Great Northern Railway Company is defendant and is plaintiff in error, and show cause if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 27th day of

July, A. D. 1916, and of the Independence of the United States the one hundred forty-first year.

(Signed) FRANK H. RUDKIN,
United States District Judge for the Eastern District of Washington, Northern Division.

[Seal] Attest: (Signed) W. H. HARE,
Clerk.

[Endorsements]: Citation. Due service of the within Citation by a true copy thereof is hereby admitted at Spokane, Washington, this 27th day of July, A. D. 1916. (Signed) Francis A. Garrecht, Attorney for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, July 27, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [51]

[Title of Court and Cause.]

Stipulation for Transcript of Record on Appeal.

IT IS HEREBY STIPULATED between the plaintiff by its attorney, and the defendant by its attorneys, that the transcript of the record on the writ of error in the above-entitled case shall be made up of the following papers:

1. Summons and Complaint.
2. Demurrer to the Complaint.
3. Stipulation of Facts.
4. Opinion of Court.
5. Judgment of Dismissal.
6. Mandate.
7. Answer.
8. A Motion for Judgment on the Pleadings.

9. Objections of the Defendant to the Granting of Said Motion.
10. Judgment.
11. Bill of Exceptions, dated July 27, 1916.
12. Petition for Writ of Error, dated July 27, 1916.
13. Assignment of Errors, dated July 27, 1916.
14. Bond on Writ of Error, dated July 27, 1916.
15. Order Allowing Bond, dated July 27, 1916.
16. Order Allowing Writ of Error, dated July 27, 1916.
17. Citation on Writ of Error, dated July 27, 1916.
18. Stipulation as to Making Up Record, dated July 27, 1916.
19. Writ of Error, dated July 27, 1916.
20. Praecipe, dated July 27, 1916.

Dated this 27th day of July, 1916.

(Signed) FRANCIS A. GARRECHT,

Attorney for Defendant in Error and Plaintiff.

CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Plaintiff in Error and Defendant.

[52]

[Endorsements]: Stipulation for Transcript. Filed in the U. S. District Court for the Eastern District of Washington, July 28, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [53]

Writ of Error.

The President of the United States of America to the Honorable, the Judge of the District Court of the United States for the Eastern District of Washington, Northern Division Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you at the April Term, 1916, thereof, between the United States of America, plaintiff, and Great Northern Railway Company, defendant, a manifest error hath happened to the great damage of the Great Northern Railway Company, plaintiff in error, as by its complaint appears;

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid and all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco in the State of California, on the 26th day of August next, in the said Circuit Court of Appeals to be then and there held, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 27th day of July, A. D. 1916 and the Independence of the United States the one hundred forty-first year.

[Seal] (Signed) W. H. HARE,
Clerk of the District Court for the Eastern District of Washington, Northern Division.

Allowed by:
(Signed) FRANK H. RUDKIN,
District Judge. [54]

[Endorsements]: Writ of Error. Service of the within writ of error and receipt of a copy thereof is hereby admitted this 27th day of July, 1916. (Signed) Francis A. Garrecht, Attorney for Defendant in Error. Filed in the U. S. District Court for the Eastern District of Washington, July 27th, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [55]

[Endorsed]: No. 2836. United States Circuit Court of Appeals for the Ninth Circuit. Great Northern Railway Company a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division. Filed August 3, 1916.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals in and
for the Ninth Circuit.*

No. —.

GREAT NORTHERN RAILWAY COMPANY, a
Corporation,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Stipulation for Printing Record Under Rule 23.

IT IS HEREBY STIPULATED by plaintiff in error, by its attorneys, and by defendant in error, by its attorney, that in printing the record in the above-entitled action the clerk shall cause the following to be printed for the consideration of the Court on appeal:

1. Complaint.
2. Answer.
3. Bill of Exceptions.
4. Petition for Writ of Error.
5. Assignment of Errors.
6. Bond on Writ of Error.
7. Order Allowing Bond.
8. Order Allowing Writ of Error.
9. Writ of Error.
10. Citation and Admission of Service.
11. Stipulation for Printing Record.
12. Stipulation as to Making Record.

And it is further stipulated, that in printing said record, there may be omitted therefrom the title of the court and cause on all papers, excepting the first page, and that in lieu of said title of court and said cause there be inserted in the place and instead thereof, the following words: "Title of Court and Cause."

Dated this 28th day of July, 1916.

CHARLES S. ALBERT and
THOMAS BALMER,

Attorneys for Plaintiff in Error and Defendant,
Great Northern Railway Company.

FRANCIS A. GARRECHT,
Attorney for Defendant in Error and Plaintiff,
United States of America.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals in and for the Ninth Circuit. Great Northern Railway Co., a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation for Printing.

No. 2836. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation Under Rule 23. Filed Aug. 3, 1916. F. D. Monckton, Clerk.

